



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 22, 2020

Ms. Jacqueline E. Hojem
Public Information Officer
Metropolitan Transit Authority of Harris County
P.O. Box 61429
Houston, Texas 77208-1429

OR2020-32034

Dear Ms. Hojem:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 859592 (MTA No. 2020-0659).

The Metropolitan Transit Authority of Harris County (the "authority") received a request for information pertaining to a specified motor vehicle accident involving the requestor's client. You state the authority released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. In addition, a federal regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101 of the Act. *See* Open Records Decision No. 599 at 4 (1992). Section 40.321 of title 49 of the Code of Federal Regulations relates to the confidentiality of workplace drug and alcohol testing information of employers participating in the United States Department of Transportation ("DOT") drug or alcohol testing process. *See* 49 C.F.R. pt. 40 (procedures for transportation workplace drug and alcohol testing programs). Section 322 of title 49 of the United States Code authorizes the Secretary of Transportation (the "secretary") to prescribe regulations necessary to carry out the duties and powers of the secretary. *See* 49 U.S.C. § 322. Section 40.321 of title 49 of the Code of Federal Regulations provides as follows:

Except as otherwise provided in this subpart, as a service agent or employer participating in the DOT drug or alcohol testing process, you are prohibited

from releasing individual test results or medical information about an employee to third parties without the employee's specific written consent.

(a) A "third party" is any person or organization to whom other subparts of this regulation do not explicitly authorize or require the transmission of information in the course of the drug or alcohol testing process.

(b) "Specific written consent" means a statement signed by the employee that he or she agrees to the release of a particular piece of information to a particular, explicitly identified, person or organization at a particular time. "Blanket releases," in which an employee agrees to a release of a category of information (e.g., all test results) or to release information to a category of parties (e.g., other employers who are members of a C/TPA, companies to which the employee may apply for employment), are prohibited under this part.

49 C.F.R. § 40.321. You state the submitted information consists of the drug and alcohol test results of an authority employee that are confidential under section 40.321. You state the authority maintains the information pursuant to section 40.321 of title 49 of the Code of Federal Regulations. You state no written consent has been given with respect to disclosure of the information in question. *See id.* § 40.321(b). Based upon these representations and our review, we conclude the authority must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 322 of title 49 of the United States Code and section 40.321 of title 49 of the Code of Federal Regulations.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Deborah Southerland
Assistant Attorney General
Open Records Division

DS/rm

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Enc. Submitted documents

c: Requestor
(w/o enclosures)